

LAW OFFICES
BROENING OBERG WOODS & WILSON
PROFESSIONAL CORPORATION
2800 North Central Avenue, Suite 1600
PHOENIX, ARIZONA 85004
(602) 271-7700
DONALD WILSON JR. (005205)
BRIAN HOLOHAN (009124)
DWJ@BOWWLAW.COM
BH@BOWWLAW.COM

Attorneys for Defendant Wilton Person

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Nexa Mortgage, LLC, an Arizona limited liability company,

No. _____

**NOTICE OF REMOVAL FROM
MARICOPA COUNTY SUPERIOR
COURT**

Plaintiff,

V.

Smart Mortgage Centers, Inc., an Illinois for-profit corporation; and Wilton A. Person.

Defendants.

Defendant Wilton A. Person hereby removes this action from the Maricopa County Superior Court to this court. Removal is proper under 28 U.S.C. §§ 1332, 1441(a) and (b) for the following reasons:

L. THIS NOTICE OF REMOVAL IS TIMELY AND PROPERLY FILED.

1. Plaintiff Nexa Mortgage, LLC, is incorporated in Arizona and, according to its own complaint, is headquartered in Chandler, Arizona.

22 2. Plaintiff commenced this action in Arizona state court on December 22, 2022.

23 3. The removing Defendant, Wilton Person, first had notice of the filing of the
24 complaint when he was served with it on February 7, 2023. Accordingly, Mr. Person has
25 timely filed this Notice of Removal within 30 days of notice as required under 28 U.S.C. §
26 1446(b).

1 4. This Notice of Removal is signed by counsel pursuant to Rule 11 of the
2 Federal Rules of Civil Procedure, as required under 28 U.S.C. § 1446(a).

3 5. Pursuant to 28 U.S.C. § 1446(d) and Local Rule 3.6(a), Defendant Person is
4 providing copies of this Notice of Removal to Plaintiff's counsel and to the Arizona Superior
5 Court for filing.

6 6. Pursuant to Local Rule 3.6(b), Defendant Wilton Person is attaching the most
7 recent version of the docket as published by the Clerk of Court for the Maricopa County
8 Superior Court as **Exhibit 1**. In addition, pursuant to 28 U.S.C. § 1446(a) and Local Rule
9 3.6(b), true and correct copies of "all pleadings and other documents" filed in the state court
10 proceeding are attached as **Exhibit 2a-c**. Defendant Person verifies through undersigned
11 counsel that **Exhibit 2** contains "true and correct copies of all pleadings and other documents
12 filed in the state court proceeding."

13 **II. COMPLETE DIVERSITY EXISTS**

14 7. Citizenship of a party for purposes of diversity is determined at the time an
15 action is initially filed. *Freeport-McMoran, Inc. v. K N Energy, Inc.*, 498 U.S. 426, 428, 111
16 S.Ct. 858, 860 (1991); *Saadeh v. Farouki*, 107 F.3d 52, 57 (D.C. Cir. 1997); *Coury v. Prot*,
17 85 F.3d 244, 252 (5th Cir. 1996); *Lew*, 797 F.2d at 750; *Krasnov v. Dinan*, 465 F.2d 1298,
18 1300 (3d Cir. 1972); *Kaiser v. Loomis*, 391 F.2d 1007, 1009 (6th Cir. 1968).

19 8. According to ¶1 of its Complaint, Plaintiff alleges it is an entity formed under
20 Arizona law with its headquarters in Arizona. It is thus a citizen of Arizona pursuant to 28
21 U.S.C. §1332(c).

22 9. At the time the Complaint was filed, Defendant Person was (and continues to
23 be) a citizen of Illinois.

24 10. At the time the Complaint was filed, Defendant Smart Mortgage Centers, Inc.,
25 is a citizen of Illinois. It is incorporated in Illinois and Illinois is its principal place of
26 business.

III. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000

11. According to ¶88, Plaintiff allegedly suffered damages of “over” \$5,000,000.

IV. ALL OTHER DEFENDANTS CONSENT TO REMOVAL

12. The only other Defendant, Smart Mortgage Centers, Inc., has not as of the date of this Notice been served. It will file the required consent pursuant to 28 U.S.C. § 1446(b)(2)(B) if/when it is served.

V. CONCLUSION

This Court has subject matter jurisdiction because this Notice of Removal was timely and properly filed, complete diversity exists between the Plaintiff and both Defendants, and the amount in controversy exceeds \$75,000. Accordingly, Defendant Person respectfully requests that this court assume full jurisdiction over the cause herein as provided by law, and that all further proceedings in the Maricopa County Superior Court be stayed. In filing this Notice of Removal, Defendant does not waive, and expressly reserves, any defense that may be available to him, including lack of personal jurisdiction.

Dated 8th day of March, 2023.

BROENING, OBERG, WOODS & WILSON, P.C.

By /s/ Donald Wilson, Jr.

Donald Wilson, Jr.

Brian Holohan

Attorneys for Defendant Person

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I hereby certify that on March 8, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing, and via Email, to the CM/ECF registrants:

Jeffrey C. Matura, State Bar No. 019893

John J. Daller, State Bar No. 034016

JOHN J. DALLAS, State Bar No. 35
BARRETT & MATURA, P.C.

8925 East Pima Center Parkway, Suite 215

Scottsdale, Arizona 85258

By /s/ *Karleen Johnston*